



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF CHIEF COUNSEL
ASSOCIATE CHIEF COUNSEL GENERAL LEGAL SERVICES (CC:GLS)
950 L'ENFANT PLAZA, S.W., 2ND FLOOR
WASHINGTON, D.C.
Telephone: (202) 283-7900
Facsimile: (202) 283-7979**

GLS-146669-05
GLS-HQ-1576-05
CC:GLS:EGG:Kwitter

October 20, 2005

**MEMORANDUM FOR DEBORAH GASCARD WOLF
DIRECTOR, FILING & PAYMENT COMPLIANCE
MODERNIZATION OFFICE**

FROM: Mark S. Kaizen /s/ Linda R. Horowitz
Associate Chief Counsel (General Legal Services)

SUBJECT: Use of funds retained under I.R.C. § 6306(c)(2).

This responds to your request for advice regarding the retention of a portion of the collections by persons who have entered into qualified collection contracts with the Service under the authority of I.R.C. § 6306, added by § 881 of The American Jobs Creation Act of 2004, Pub. L. 108-357, 118 Stat. 418 (Oct. 22, 2004). Specifically, the Service may retain "an amount not in excess of 25 percent of such amount collected for collection enforcement activities of the Internal Revenue Service." I.R.C. § 6306(c)(2). The statute does not define "collection enforcement activities" and the legislative history provides little guidance as to the type of expenditures Congress intended to fund with these monies. In a memorandum dated February 28, 2005 (attached), we previously advised that amounts retained under I.R.C. § 6306(c)(2) could be used to support the Filing and Payment Compliance (FPC) project, a computer system used to enhance collection efforts. However, we advised that because the FPC is a modernization project funded by the Business Systems Modernization (BSM) appropriation, the Service must comply with the review and approval requirements of the BSM appropriation. You now seek advice regarding whether the retained funds can be used for specific expenditures related to the FPC. We find nothing in the proposed expenditures that would alter our prior advice. As the specific expenditures support the Service's collection program, the retained funds may be used for those expenditures.

[REDACTED]

The FPC is a system designed to support the Service's internal collection activities, as it

PMTA: 00759

is intended to reduce collection cycle time, making the use of the Service's internal collection resources more efficient. See <http://bsm.web.irs.gov/F&PC/Objective.htm>. Thus, the FPC can be considered a collection enforcement activity within the plain meaning of I.R.C. § 6306(c)(2). The specific expenditures on which you seek our advice include services to support porting of the Commercial Off The Shelf software from DB2 to Oracle; services to make the application fully compliant with section 508 of the Rehabilitation Act; services to support building interfaces to the Registered User Portal and Employee User Portal; an increase in the software licensing fee to support all releases of the FPC software; hardware to support deployment of the application; and other infrastructure shared services costs to support future releases of the FPC software. Based on the information provided by you, it appears that these expenditures are exclusively related to the FPC and the Service's internal collection programs. The activities do not support other Service programs and have limited utility to the private debt collection program. For these reasons, it is our opinion that these expenditures may be considered collection enforcement activities within the meaning of the statute and the retained funds may be used for these activities.

The FPC has traditionally been funded under the BSM appropriation. The BSM appropriation requires that prior to an obligation of BSM funds, the Service must submit to the Committees on Appropriations, and such Committees approve, a plan for expenditure for the BSM funds. See Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, Pub. L. 108-477 (Dec. 8, 2004); see also H.R. 3058, a bill making appropriations to the Department of the Treasury for fiscal year 2006; H.J. Res. 68, Pub. L. 109-77 (Sept. 30, 2005). Prior to obligating any of the retained funds for the FPC, the Service must comply with the review and approval requirements of the BSM appropriation.

If you have any questions regarding this matter, or if we can provide additional assistance, please contact Kirsten Witter of this office at (202) 283-7900.

Attachment

cc: Carol A. Campbell, Division Counsel (Wage and Investment)